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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 LUNA GAMING - SAN DIEGO LLC, a
13 Michigan Limited Liability Company,

14 Plaintiff,

15 vs.

16 DORSEY & WHITNEY, LLP,
17 HOLLAND & KNIGHT, LLP, BLEDSOE
18 DOWNES & ROSIER, P.C., JAMES
19 TOWNSEND, PHILIP M. BAKER-
20 SHENK, and BRADLEY GRANT
21 BLEDSOE DOWNES, jointly and
22 severally,

23 Defendants.
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No.: 06-CV-2804 BTM WMc

PROTECTIVE ORDER

1 This Protective Order shall govern the production and disclosure of confidential
2 documents, testimony and information in this action.

3
4 **I. PURPOSE OF THE PROTECTIVE ORDER**

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6 The purpose of this Protective Order is to provide a means for limiting access
7 to, and the use and disclosure of, Protected Documents and Information that are
8 produced in this action. Any unauthorized disclosure of Protected Documents and
9 Information in violation of this Protective Order shall be subject to discipline by the
10 contempt powers of this Court.

11
12 **II. DEFINITION OF PROTECTED DOCUMENTS AND INFORMATION**

13
14 “Protected Documents and Information” includes all documents, testimony,
15 information or things that (1) have been or are provided, served, or produced by any
16 party in this action; and (2) have been designated as “Confidential” or “Confidential
17 Attorney’s Eyes Only.” Protected Documents and Information may include, without
18 limitation, documents produced by any party, written declarations, written discovery
19 responses, testimony given or produced in this action by any party or party
20 representative, correspondence, pleadings, exhibits, expert witness disclosures, and
21 the information contained therein.

22
23 **III. DESIGNATION OF PROTECTED DOCUMENTS AND INFORMATION**

24
25 Any party who produces Protected Documents and Information in this action
26 may designate such Protected Documents and Information as “Confidential” or
27 “Confidential Attorney’s Eyes Only” in accordance with the provisions of this
28 Protective Order if they believe in good faith that the information so designated is of

1 such character that its disclosure to unauthorized persons could reasonably result in
2 harm.

3
4 **A. Criteria For Classification**

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6 1. "Confidential": Counsel of record for a party may designate Protected
7 Documents and Information as "Confidential" if the party making such designation
8 deems the information so designated to constitute proprietary data, or marketing,
9 contract, financial, negotiated or similarly commercially sensitive business
10 information or data which is not publicly known and cannot be ascertained from an
11 inspection of publicly available documents, materials or devices.

12
13 2. "Confidential Attorney's Eyes Only": Counsel of record for a party may
14 designate Protected Documents and Information as "Confidential Attorney's Eyes
15 Only" if (1) the party making such designation reasonably believes that such Protected
16 Documents and Information satisfy the criteria for designating such Protected
17 Documents and Information as "Confidential," and (2) which the designating party
18 maintains in confidence and reasonably believes that unprotected disclosure might
19 result in economic or competitive injury.

20
21 **B. Time Of Designation**

22
23 Unless otherwise agreed between counsel for the parties, the designation of
24 Protected Documents and Information shall be made at the following times:

25
26 1. For documents or things at the time of the production of the documents
27 or things;
28

1 2. For declarations, correspondence, expert witness reports, written
2 discovery responses, court filings, pleadings, and other documents, at the time of the
3 service or filing, whichever occurs first;

4
5 3. For testimony, at the time such testimony is given by a statement
6 designating the testimony as "Confidential" or "Confidential Attorney's Eyes Only"
7 made on the record or, by written notification to all counsel of record within fourteen
8 (14) days after receipt by the designating party of the deposition transcript.

9
10 **C. Manner Of Designation**

11
12 The designation of Protected Documents and Information shall be made in the
13 following manner:

14
15 1. For documents, placing the notation "Confidential" or "Confidential
16 Attorney's Eyes Only" or similar legend on each page of such document;

17
18 2. For tangible things, by placing the notation "Confidential" or
19 "Confidential Attorney's Eyes Only" on the object or container thereof or if
20 impracticable, as otherwise agreed by the parties;

21
22 3. For declarations, correspondence, expert witness reports, written
23 discovery responses, court filings, pleadings, and any other documents containing
24 Protected Documents and Information, by placing the notation "Confidential" or
25 "Confidential Attorney's Eyes Only" both on the face of such document and on any
26 particular designated pages of such document; and

1 4. For testimony, by orally designating such testimony as being
2 “Confidential” or “Confidential Attorney’s Eyes Only” at the time the testimony is
3 given. Thereafter, the original and all copies of the “Confidential” or “Confidential
4 Attorney’s Eyes Only” portions of the transcript of any such testimony shall be
5 separately bound and marked by the Court Reporter with an appropriate legend and
6 shall be disclosed only in accordance with the provisions of this Protective Order.
7 Alternatively, counsel of record may designate portions of testimony as
8 “Confidential” or “Confidential Attorney’s Eyes Only” by written notification to all
9 counsel of record within fourteen (14) days after receipt by the designating party of
10 the deposition transcript.

11
12 **D. Resolution Of Disputes Regarding Designation**

13
14 The acceptance by a party of Protected Documents and Information shall not
15 constitute an admission or concession or permit an inference that such “Confidential”
16 or “Confidential Attorney’s Eyes Only” designation is appropriate. However, the
17 Protected Documents and Information will be treated as designated unless the
18 receiving party follows the procedures to remove, change or otherwise declassify the
19 designation as set forth herein.

20
21 If a receiving party at any time wishes to have the “Confidential” or
22 “Confidential Attorney’s Eyes Only” designation of any particular Protected
23 Documents and Information removed or changed, that party shall first request in
24 writing that the designating party remove its designation and state the reason(s)
25 therefore. Within ten (10) business days of the receipt of such request, counsel for the
26 party seeking confidential treatment shall respond in writing to any such notification
27 by either (1) withdrawing such designation, or (2) stating that it refuses to do so and
28 the reason(s) for its refusal. If the party designating the Protected Documents and

1 Information refuses to agree to remove or change the designation, then the party
2 challenging the designation may move the Court in accordance with the Local Rules
3 for an order removing or challenging the designation; provided, however, that the
4 designating party shall have the burden of proving that such particular Protected
5 Documents and Information are properly designated as "Confidential" or
6 "Confidential Attorney's Eyes Only." If such motion is made, the parties shall treat
7 the Protected Documents and Information as originally designated until the motion is
8 decided by the Court.

9
10 **E. Inadvertent Disclosure**

11
12 The inadvertent disclosure to another party of any document which is subject to
13 a legitimate claim that the document should have been withheld from disclosure as a
14 privileged attorney/client communication or attorney work product shall not constitute
15 a waiver of any privilege or otherwise affect the right to withhold from production as
16 privileged or work product any other documents, even though such documents may
17 relate to the same or related transaction or subject matter as the document
18 inadvertently disclosed. If a request is made in good faith to return any such allegedly
19 privileged or work product document that was inadvertently disclosed, the party that
20 received the document shall return the document to the producing party within thirty
21 days of the request, together with all copies of any such documents. The privilege or
22 work product status of such document or information, if any, shall be deemed to be
23 restored upon the making of such request, provided, however that: (1) Nothing herein
24 shall preclude the non-producing party from requesting the Court to determine
25 whether the document or information is privileged or work product information. In
26 the event that the non-producing party intends to challenge the claim of privilege, the
27 non-producing party may retain a copy of such document for such purposes; and (2) If
28 the producing party either (i) expresses the intent to use such document or information

1 at a hearing, deposition or trial, or (ii) uses such document or information at a hearing,
2 deposition or trial, the producing party's right to request return of such document or
3 information shall be foreclosed.

4
5 **IV. PERSONS TO WHOM PROTECTED DOCUMENTS AND**
6 **INFORMATION MAY BE DISCLOSED**

7
8 **A. Disclosure Of Protected Documents And Information Designated As**
9 **"Confidential"**

10
11 Protected Documents and Information designated by a party as "Confidential"
12 may be disclosed and copies may be provided by the receiving party only to:

13
14 1. The receiving party's outside counsel of record and such counsel's
15 support staff, legal assistants and clerical personnel;

16
17 2. Party representatives or employees whose assistance is required by
18 counsel for the purposes of this litigation;

19
20 3. Any non-party support services including, but not limited to, outside
21 copying services, document imaging and database services, graphics and design
22 services, jury and trial consulting services (including mock jurors), and any other non-
23 expert related support personnel whose services are reasonably necessary to assist
24 outside counsel of record in connection with this action;

25
26 4. Expert witnesses or consultants retained by the receiving party or its
27 respective attorneys in connection with this action, who have complied with
28 Paragraph IV(C), below; and

1 5. The Court, its clerks and employees, and any court reporter retained to
2 record proceedings before the Court in which event such information shall be filed in
3 a redacted form and lodged in an unredacted form.

4
5 **B. Disclosure Of Protected Documents And Information Designated As**
6 **“Confidential Attorney’s Eyes Only”**

7
8 Protected Documents and Information designated as “Confidential Attorney’s
9 Eyes Only” may be disclosed and copies may be provided by the receiving party only
10 to:

11
12 1. The receiving party’s outside counsel of record and such counsel’s
13 support staff, legal assistants and clerical personnel, as long as they are not officers,
14 directors or employees of the parties or of any of the subsidiaries, parents, or affiliates
15 of the parties;

16
17 2. Any non-party support services including, but not limited to, outside
18 copying services, document imaging and database services, graphics and design
19 services, jury and trial consulting services (including mock jurors), and any other non-
20 expert related support personnel whose services are reasonably necessary to assist
21 outside counsel of record in connection with this action, provided they are not
22 officers, directors or employees of the parties or of any of the subsidiaries, parents, or
23 affiliates of the parties;

24
25 3. Expert witnesses or consultants retained by the receiving party or its
26 respective attorneys in connection with this action who have complied with
27 Paragraph IV(C) and who are not officers, directors or employees of the parties or of
28 any of the subsidiaries, parents, or affiliates of any party; and

1 4. The Court, its clerks and employees, and any court reporter retained to
2 record proceedings before the Court in which event such information shall be filed in
3 a redacted form and lodged in an unredacted form.

4
5 **C. Certificate Required By Party Or Person Receiving Protected**
6 **Documents And Information**

7
8 Party representatives and others who are entitled to receive Protected
9 Documents and Information (including expert witnesses but excluding clerical staff
10 and support staff and employees of the Court), prior to accepting receipt thereof, shall
11 be furnished with a copy of this Protective Order and shall agree to be bound thereby
12 by executing a Certificate, in the form attached hereto. Such execution certifies that
13 the recipient has read and understands the terms of this Protective Order and agrees to
14 be bound by its terms. Upon the request of any party, a copy of said Certificates (with
15 the exception of non-testifying expert consultants) shall be served on all other parties.

16
17 **D. Additional Authorized Disclosure Of Protected Documents and**
18 **Information**

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20 Notwithstanding any other provisions of this Protective Order, particular
21 Protected Documents and Information may be disclosed and copies may be provided:

22
23 1. To persons who can be shown from the face of the document to have
24 authored, prepared, or received the document;

25
26 2. To any other persons with the prior written consent of the party that
27 designated such particular Protected Documents and Information; and
28

3. To any other persons with the prior authorization of the Court.

V. USE OF PROTECTED DOCUMENTS AND INFORMATION

A. Use Of Designated Protected Documents and Information

1. Protected Documents and Information designated as "Confidential" or "Confidential Attorney's Eyes Only," including all information derived therefrom, and all copies, summaries, abstracts, excerpts, and descriptions of such material, shall be held in confidence by the receiving party, shall be used only by persons permitted access to it under this Protective Order, shall not be disclosed by the receiving party to any party or person not entitled under the terms of this Protective Order to have access to such material, and shall not be used for any purpose other than in connection with this action.

2. In the event a party wishes to use any Protected Documents and Information of the other party in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such paper containing Protected Documents and Information shall be redacted and filed with the Court identifying the redacted information substantially as follows:

**CONFIDENTIAL - (OR CONFIDENTIAL ATTORNEY'S EYES ONLY) -
SUBJECT TO PROTECTIVE ORDER**

This Confidential (or Confidential Attorney's Eyes Only) information has been redacted from the public record. An unredacted copy containing this Confidential (or Confidential Attorney's Eyes Only) information has been

1 lodged with the Court pursuant to the terms of the Protective
2 Order entered in this case.

3
4 Thereafter, the filing party shall lodge a copy of the document
5 containing the Protected Documents and Information directly with the Court and
6 shall serve a copy of such document on all other parties. The Clerk of the Court shall
7 refrain from placing in the public record a copy of the documents containing the
8 Protected Documents and Information that is lodged with the Court. The Clerk shall
9 make such documents available only to the Court and to counsel of record for the
10 parties in these proceedings, unless release is ordered by the Court, or the filing party
11 agrees in writing to the release of such Protected Documents and Information.

12
13 3. The parties shall provide each other with a list of the other party's
14 Protected Documents and Information that the party intends to use at trial, or in
15 connection with any appeal of this action, at such time as the list of exhibits is ordered
16 by the Court to be exchanged among the parties. The parties shall then meet and
17 confer regarding the procedures for use of such identified Protected Documents and
18 Information at trial and shall move the Court for entry of an appropriate order if
19 required.

20
21 4. Nothing in this Protective Order shall affect the admissibility into
22 evidence of Protected Documents and Information, or abridge the rights of any party
23 to seek judicial review or to pursue other appropriate judicial action with respect to
24 any ruling made by the Court concerning the issue of the status of Protected
25 Documents and Information. This Protective Order is without prejudice to any party
26 seeking an Order from this Court imposing further restrictions on the dissemination of
27 Protected Documents and Information, or seeking to rescind, modify, alter, or amend
28 this Protective Order with respect to specific information. Nothing in this Protective

Order shall prevent any designating party from using or disclosing its own Protected Documents and Information as it deems appropriate.

VI. RETURN OF DOCUMENTS OR INFORMATION

No later than ninety (90) days after conclusion of this litigation,¹ outside counsel for each receiving party or other individual subject to this Protective Order shall be under an obligation to destroy or return to the designating party any Protected Documents and Information subject to this Protective Order, including all copies thereof. Notice of the destruction or return of any such Protected Documents and Information shall be made in writing, and notice of receipt thereof shall be acknowledged in writing. Notwithstanding the foregoing provisions of this Paragraph, receiving counsel shall be entitled to retain all litigation documents containing Protected Documents and Information which become part of the record of this action, including pleadings, briefs, and exhibits, but such litigation documents shall be used only for the purpose of preserving a record of the action, and shall not, without the written permission of the designating party or an order of the Court, be disclosed to anyone not permitted to receive such information pursuant to this Protective Order.

VII. SURVIVAL

All obligations and duties arising under this Protective Order shall survive the termination of this action. The Court retains jurisdiction over the parties hereto and all signatories of a Certificate agreeing to be bound by the Protective Order with

¹ As used herein, "conclusion of this litigation" is defined as the date on which this matter is settled by way of enforceable agreement or on which all appeals and rights to appeal have been exhausted, whichever is earlier.

1 respect to any dispute regarding the improper use of Protected Documents and
2 Information.


3
4 **VIII. VIOLATION OF PROTECTIVE ORDER**

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6 Any violation of this Protective Order may constitute a contempt of Court, and
7 be punishable as such, and may subject the offending party or non-party to such
8 additional and further remedies as may be available to the aggrieved party.

9
10 **This order is subject to further court order based upon public policy or**
11 **other reasons and may be modified *sua sponte* in the interests of justice.**

12
13 **IT IS SO ORDERED.**

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15 DATE: AUGUST 27, 2007

16 
Honorable William McCutcheon, Jr.
United States Magistrate Judge

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